

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

MARCUS K. POWELL,

Plaintiff,

v.

**NUCOR STEEL MEMPHIS, INC. and
SANDERS PRESSURE WASHING,
INC.,**

Defendants.

No.: 2:19-cv-02280-TLP-jay

REPORT AND RECOMMENDATION

Before this Court is Defendant's, Nucor Steel Memphis, Inc., Motion to Dismiss under 12(b)(6) or Alternatively for Summary Judgment (D.E. 11), and Plaintiff Marcus K. Powell's Motion for Court Hearing on the Motion to Dismiss (D.E. 15). Plaintiff has responded in opposition to Defendant's Motion to Dismiss and filed an Amended Complaint. (D.E. 12 & 13). Plaintiff also filed a Memorandum in Support of Plaintiff's Motion for Summary Judgment. (D.E. 14). However, Plaintiff did not file a motion for summary judgment. The Magistrate Judge believes, due to Plaintiff's *pro se* status, that Plaintiff intended his memorandum to be in support of his opposition to Defendant's Motion to Dismiss. Defendant filed an answer to Plaintiff's Amended Complaint. (D.E. 17). This case has been referred to the United States Magistrate Judge for management and for all pretrial matters for determination and/or report and recommendation as appropriate. (Admin. Order 2013-05). For the following reasons, the

Magistrate Judge recommends that this Court DENY Defendant's Motion to Dismiss and DENY Plaintiff's Motion for Court Hearing.

It is well settled that an amended complaint supersedes all prior complaints. *B & H Medical, L.L.C. v. ABP Admin., Inc.*, 526 F.3d 257, 268 (6th Cir. 2008). Consequently, courts in this Circuit will deny Rule 12 motions as moot after a plaintiff subsequently files an amended complaint. See *Pinks v. Lowe's Home Ctrs., Inc.*, 83 F. App'x 90 (6th Cir. 2003); *Productive MD, LLC v. Aetna Health, Inc.*, No. 3:12-cv-00052, 2012 WL 1119654, at * 2 (M.D. Tenn. Apr. 3, 2012); *Dooley v. Byars*, No. 5:11-CV-153, 2012 WL 443470 (W.D. Ky. Feb. 10, 2012); *McCloy v. Correction Med. Servs.*, No. 07-13839, 2009 WL 190035, *2 (E.D. Mich. Jan. 27, 2009); *Williams v. Kelly*, No. 07-10999, 2007 WL 2951303, *1 (E.D. Mich. Oct. 10, 2007); *Yates v. Applied Performance Techs., Inc.*, 205 F.R.D. 497, 499 (S.D. Ohio 2002). Therefore, Defendant's Motion to Dismiss is now moot. Since Defendant's Motion is now moot, Plaintiff's request for a hearing on the matter should also be DENIED as moot.

CONCLUSION

For these reasons, the Magistrate Judge recommends that this Court DENY as moot both Defendant's Motion to Dismiss and Plaintiff's Motion for Court Hearing.

Respectfully Submitted this 20th day of June, 2019.

s/Jon A. York
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATION MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATION. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.